Supreme Court, U.S.
FILED
FEB 4 1980
MICHAEL RODAK, JR., CLERK

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1979

NO. 79-925

Edna I. Baker and Roger L. Baker,

APPELLANTS

vs.

Oregon State Bar, Albert R. Musick, Holger M. Pihl, Claire Tri, Robert Briggs, John R. and Jacqueline C. Skourtes, William Hurley, James E. Auxier, Estate of Paul M. Reeder, Paul M. Reeder, and Frank Porcelli jr.,

APPELLEES.

APPEAL FROM THE SUPREME COURT OF THE STATE OF OREGON

BRIEF IN RESPONSE TO DISMISSAL MOTION

Appellants, pro se:

EDNA I. & ROGER L. BAKER

P.O. BOX 5018

ALOHA, OREGON 97006

Telephone: 649-1897

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1979

NO. 79-925

Edna I. Baker, et al, _____*Appellants*,

vs.

Albert R. Musick, et al, _____*Appellees*.

APPEAL FROM THE SUPREME COURT OF THE STATE OF OREGON

BRIEF IN RESPONSE TO DISMISSAL MOTION

Pursuant to Rule 16 (4) of the United States Supreme Court, appellants Edna I., & Roger L. Baker file this brief in response to the defendants' motion to dismiss for the purpose of indicating false facts as well as misleading representations by the defendants

STATEMENT TO CORRECT DEFENDANTS' ERRORS

This case is the result of one fraudulent equity suit, but that is not the issue before this Court. It is the subsequent abuses by the Courts of the State of Oregon, and of the officers of those courts. The fact that the courts would not enforce their

own mandate for specific performance, and the fact that the courts have violated the statutory mandates from the people of the State of Oregon which require trials of any alleged damages.

A

The defendants admit the specific performance decree, (motion p-3) but totally ignore the buyers' (Mr. & Mrs. John R. Skourtes) default, before and after the decree. As an added inference, the defendants refer to a house in which plaintiffs were living, but that house was not on the property of the land sale contract.

B

The defendants (motion p-4) twisted facts of defendant Reeder's failure to properly direct and maintain the conservatorship, somehow, into the false impression that Mrs. Baker had failed to properly handle her duties as personal representative of her father's estate, whereas:

1. Mrs. Baker made full accounting as personal representative of the estate;
2. and Mrs. Baker maintained an estate checking acount from the minute she had been appointed.

C

The defendants then refer to defendant Reeder's lien on checks in the land sale, (motion p-5). The facts are that defendant Reeder held two checks, each one of which was for an amount of more than his total claim against the estate. Subsequent events proved that the buyer did not have funds to make a later payment if defendant Reeder had deposited the two checks into a trust account.

D

Continuing on (motion p-5) in the same vein, the defendants then allege that defendant Reeder filed for a summary determination on his claim and the court scheduled a hearing, whereas, the truth is that the court set a hearing date, and a few days later, defendant Reeder petitioned for the hearing.

The failure of the probate court to maintain an impersonal standing in the probate procedings, along with the probate court's failure to uphold the statutory mandates of the State of Oregon are crucial aspects of plaintiffs' action. Without the attorneys' self-seeking involvment in the matter, the courts could not have acted so flagrantly.

E

The defendants refer to Judge Pihl's order to retain an attorney, (motion p-5). The operative facts here, are that Mrs. Baker did retain defendant Porcelli, but with specific instructions that he not interfer with Mrs. Baker's right to require rejected claims be tried in a regular court of law.

Defendant Porcelli appeared before Judge Pihl and failed to challenge the Judge's false affidavit against Mrs. Baker.

ARGUMENTS

A

The defence will argue (motion p-11) that ORS 9.160 was not challenged as being unconstitutional. The truth is that, ORS 9.160 was amended by Judicial Legislation; stripped of its mandate for self-representation, by the probate court, and by subsequent appeal dismissals. Plaintiffs first cited Article I, §10, of the United States Constitution in their (Juris. Statement, Page 4) complaint.

B

Defendants' argument (motion p-12) is a gross distortion of the facts, whereas, Mrs. Baker had fully performed her duties as required by law.

C

Defendants' allegation (motion p-14) that the federal question was not "actually considered and decided", is false, because the courts could have decided the issue. The Oregon rule is that the Constitutionality of a statute must be raised in the trial court: State vs. O'Neill 21 OrApp 710,716 (1975) , and that a constitutional issue may be considered for the first time on appeal if there are compelling reasons to do so:

Damascus Community Church vs. Clackamus Co. 32 OrApp 3,13, note 2 (1978) 573 P2d 726, although the rule did not apply in that case.

D

Plaintiffs contend that Central vs Laidley 159 US 103,110 (1895), as cited (motion p-15) does not apply, as the question is not that the courts below misconstrued the law, but that the courts arbitrarily and illegally changed the law. The fact that the courts

had no legal authority to invade powers reserved to the State Legislature automatically invokes the Federal Separation of Powers clause.

As stated (Juris. Stat. p-7) ORS 9.320 is a prime right in the State of Oregon, as it is organic law, and only amendable by a vote of the people.

The Court in State Ex Rel Lucas vs. Goss 23 OrApp 501,504 (1975) 543 P2d 9, stated:

> It is axiomatic that the doctrine of separation of powers prohibits the judiciary from encroaching upon or interfering with the proper exercise of the legislative function.

E

The defendants alleged (motion p-16,17) that plaintiff's failure to obtain counsel and other alleged indiscretions resulted in her removal as personal representative. The essence of the Judge's order had been followed but the Judge had then issued a false affidavit and relied solely upon his own perjured statement as the basis to remove Mrs. Baker.

F

The defendants suggest (motion p-19) that their individual conduct is not applicable, but, in Flagg vs Brooks 436 US 149, 157 (1978) this Court stated:

> * * * only a state or a private person whose action 'may be fairly treated as that of the State itself',(citation omitted) 'may deprive him of an interest encompassed within the Fourteenth Amendment's protections,' * * * ".

Plaintiffs contend that whichever way the defendants classified plaintiffs' contract rights, the contract in question had been decided to be valid, and therefore, was fully protected by the Federal Constitution against a State's arbitrary interference. In Thorpe vs. Housing Authority 393US 268,278 (1968) note 31, the Court said:

> Although the constitutional prohibition of the impairment of contracts, U.S. Const. Art. I, §10, applies only to the States, we have held that '[v]alid contracts are property, whether the obligor be a private individual, a municipality, a state or the United States.

G

Defendants state that (motion p-23) the Oregon Supreme Court's jurisdiction is discretionary.

Plaintifs submit, that is exactly the way in which the state courts have deprived them of their equal protections of the law. The court's arbitrary actions fly in the face of the State Constitutional Guarantees of

recourse for damage as a result of illegal acts, and the State Guarantees of jury trial.

I

The Oregon State Court of Appeals ruled in 1970, that it had authority to decide appeals without opinion. SEE:
State of Oregon v. Herried 30 OrApp 462,464 474 P2d 358.

The net effect is to prevent self-representation in the State appeals courts.

A local case, Lenske v. Souther, et al, CA13185, is another example of the courts' interference. Mr. Lenske has an action against one of the law firms appearing in this matter, and Mr. Lenske's case was dismissed without decision.

The Court of Appeals dismisses the pro se, and the State Supreme Court rubber stamps the decision.

II

This Court in Schilb vs. Kuebel 404 US 357,367,380 (1971) said:

> * * * a statutory classification based upon suspect criteria or affecting 'fundamental rights' will encounter equal protection difficulties unless justified by a 'compelling governmental interest'.

H

Defendants assert that (motion p-24,25) the courts' dismissals rest upon adequate non-federal basis, but they cite cases which do not support or apply. Michigan vs. Tyler 436 US 499,513 (1978) note 7, was a failure to timely raise the federal issue.

SUMMATION

The facts of this case are lengthy and involved, but the issues are simple:

1. The statute ORS 9.160 is repugnant to Art. I, § 10 of the United States Constitution, as it stands amended by judicial legislation, in the light of the Federal Separation of Powers clause.

Lucas vs. Goss 23 OrApp 501,504 (1975):

> It is not within the province of the court to amend the terms of a statute because it operates unfairly in a particular instance, * * *.

2. State officers are acting with a class based animus against plaintiffs and all other pro se litigants, in a manner which deprives them of (a). recourse for damage as a result of illegal acts, and (b). jury trials, which said acts deprives them of equal protection of the law, as quaranteed by the Fourteenth Amendment of the United States Constitution.

Ortwein vs. Schwab 410 US 656,660 (1973):

> * * * even in criminal cases, due process does not require a State to provide an appellate system.

But, plaintiffs contend that, non-attorneys are in a suspect classification — where the appellate system has limited access, for members only.

Plaintiffs would assure the Court that it is not freedom of association which motivates the interest in judicial review, but solely to seek some semblance of justice from the courts.

AFFIDAVIT

STATE OF OREGON)
COUNTY OF MULTNOMAH) ss

We, EDNA I. BAKER & ROGER L. BAKER, plaintiffs in the above matter, after being duly sworn, depose and say that the foregoing statements are true.

_____
Edna I. Baker, affiant/Roger L. Baker, affiant

Subscribed and sworn to before me this_____ day of January, 1980.

_____
NOTARY PUBLIC for Oregon
My Commission expires.....